Before the
STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

In the Matter of	)	
	)	
Verizon Communications Inc. and	)	DT 05-042
MCI, Inc. Agreement and Plan of Merger	)	
	)	

COMMENTS OF THE
<u>OFFICE OF CONSUMER ADVOCATE</u>

The Office of Consumer Advocate submits its comments on the proposed merger of Verizon Communications Inc ("Verizon") and MCI, Inc. ("MCI") based upon its review of the initial Notice of Acquisition, as amended ("Notice"), as well as the Detailed Description of Impact ("Description of Impact"). Assuming that all facts presented in the pleadings are true, it appears that both Verizon and MCI have subsidiaries providing switched local services and toll services to consumers in New Hampshire. Since the OCA represents the interests of residential telephone customers, *see* RSA 363:28, these comments will focus on the effects of this proposed transaction on that customer segment.

Clearly by transferring ownership of MCI to a subsidiary of Verizon this transaction eliminates an independent competitive provider of local exchange service as well as in-state and out-of-state toll service. Notwithstanding this loss of a competitive provider, Verizon claims in its Description of Impact that the merger will not adversely impact consumers or the competitive market. OCA does not accept that the loss of a competitor, even one which is apparently losing market share of residential customers, will have no adverse impact. The loss of any competitive party is an adverse impact in a developing competitive market. Further, it is not enough to say that these entities will remain separately operated for the foreseeable future. They will be owned by a common parent and will be operated to benefit that parent and not as entirely independent entities.

Verizon is not currently meeting minimum quality of service standards for its local telephone service in New Hampshire. The proposed merger does not provide any additional incentive to meet these minimum standards and may even reduce service quality by removing a competitor who might otherwise provide consumers with an alternative to the Verizon NH service offerings.

In order to counter its concerns with the adverse impact on the competitive market for regulated wire line telephone service in New Hampshire, as well as the adverse impact on quality of service, the OCA recommends that the Commission impose the following conditions on the Verizon/MCI merger:

1. Conditions to promote competition

A standard anti-trust and regulatory response to anti-competitive combinations like this one is to open duplicative facilities to competition. **As a condition of merger, Verizon and MCI should be required to divest themselves of duplicative long-distance and Internet backbone capacity.**

2. Conditions to limit harm to competition and consumers

a. One of the significant regulatory events of the last few years was the adoption of the California Consumer Bill of Rights ("CBOR").[1] This even-handed set of consumer protections applied to a broad spectrum of telecommunications providers. Despite the California

[1] Order Instituting Rulemaking on the Commission's Own Motion to Establish Consumer Rights and Consumer Protection Rules Applicable to All Telecommunications Utilities, Rulemaking 00-02-004, Order adopted May 27, 2004. See http://www.dca.ca.gov/r_r/telecommunications_rights.htm and http://www.cpuc.ca.gov/PUBLISHED/NEWS_RELEASE/36910.htm .

Public Utilities Commission's subsequent suspension of the rules,[2] the CBOR remains a rational and reasonable set of protections for telecommunications consumers and serves to protect the customers of a merged Verizon/MCI against management's cost-cutting moves. **As a condition of the approval of the Verizon/MCI merger, the merged firm should be subject to the terms of the originally-adopted CBOR, for all of its operations.**

b. Recently, RBOCs (including Verizon) have been involved in efforts to restrict municipalities and other governmental entities from investing in broadband networks that will be made available to consumers.[3] A combined Verizon/MCI will have even more incentive and ability to participate in these anti-competitive efforts.[4] **As a condition of their merger, the Applicants should be required to commit not to participate in such efforts.**

3. Conditions to ensure consumer benefits

a. The benefits of merger synergies and cost-savings must be flowed back to consumers should be a condition for the merger. **Verizon should (i) be required to show that the merger produced the projected amount of savings per year; and (ii) agree to hold regulated residential rates at current levels in New Hampshire while simultaneously**

[2] See "Telecom bill of rights suspended – for now" at http://www.consumerwatchdog.org/utilities/nw/nw004862.php3**,** Jeffrey Silva, RCR Wireless News, January 31, 2005; "Regulatory shift worries state consumer advocates" at http://www.thedesertsun.com/apps/pbcs.dll/article?Date=20050129&Category=NEWS10&ArtNo=501290321&SectionCat=topics&Template=printart**,** Terence Chea and Jennifer Coleman, Associated Press, January 29, 2005.

[3] "Wi-Fi plan to face static," The Business Journal (Minneapolis/St. Paul), April 25, 2005 at http://twincities.bizjournals.com/twincities/stories/2005/04/25/story1.html?t=printable; "Verizon CEO sounds off on Wi-Fi, customer gripes," San Francisco Chronicle, April 16, 2005 at http://sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2005/04/16/BUGJ1C9R091.DTL&type=business; "Is Low-Cost Wi-Fi Un-American?", In These Times, April 18, 2005 at http://www.inthesetimes.com/site/main/article/2071/.

[4] In addition to increasing the incentives and ability of the larger merged entity to discriminate against rivals by raising entry barriers that will adversely affect the ability of rivals to compete, an important public interest detriment to the merger is the loss of diversity in positions. MCI has been one of the few with resources to stand in opposition to Verizon on issues of policy. Now Verizon is "buying out" its main competitor in the economic marketplace as well as in the political and regulatory arena.

reducing intrastate access rates to interstate levels as a way of flowing back merger synergies to consumers.

b. **Verizon should commit to maintaining and promoting Lifeline plans that provide benefits to eligible consumers throughout its territory**.

CONCLUSION

The merger of Verizon and MCI will harm competition. The combined Verizon/MCI entity will be able to raise substantial obstacles to other competitors in New Hampshire. This merger will combine the largest and the fourth largest firms in terms of total US revenues.[5] Further, this merger must be reviewed in context with the proposed SBC/AT&T merger, which will combine the second and third largest firms.[6] The combinations will leave the next-largest firm with less than one-fourth the revenues of the smallest of the two industry giants.

As currently structured, the merger should not be approved. If the Commission adopts substantial enforceable conditions such as those outlined above, the public interest harms will be sufficiently limited and the public interest benefits will be adequately increased so as to make approval of this merger proper under the law.

Respectfully submitted,

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Date

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[5] FCC Statistics of Common Carriers, 2003-2004, Tables 1.1 and 1.2.

[6] *Id*.